U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA C. BOENING <u>and</u> DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Amarillo, Tex.

Docket No. 97-80; Submitted on the Record; Issued October 5, 1998

DECISION and **ORDER**

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of her claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On February 6, 1995 appellant, then a 39-year-old transportation assistant, filed a claim, alleging that on February 1, 1995 she sustained chest pain, rapid heart rate, difficulty breathing, emotional distress and depression due to her concern over meeting her performance requirements and a proposed change in her position description that would remove her from the bargaining unit. In a decision dated June 13, 1995, the Office denied appellant's claim on the grounds that the identified causative factors were not compensable under the Act. In decisions dated January 10, May 29 and June 18, 1996, the Office denied merit review in appellant's claim on the grounds that the evidence submitted with her requests for reconsideration was not sufficient to warrant merit review of the Office's prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly denied appellant's requests for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim. ¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value

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¹ 20 C.F.R. § 10.138(b)(2).

and does not constitute a basis for reopening a case.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

In the present case, the evidence submitted by appellant with her requests for reconsideration is either repetitious or immaterial to the central issue in this case. With her November 14, 1995 request, for reconsideration, appellant submitted a number of medical reports, which addressed injuries appellant sustained to her hands, feet and knees in July 1991 and February 1994 or addressed fibromyalgia. As these reports do not address the claimed emotional conditions that arose on February 1, 1995 and, therefore, do not address the central issue in this case, they are not sufficient to warrant reopening appellant's claim for merit review. Although in the August 18, 1995 report, by Dr. Greg Middleton, a Board-certified internist, he does generally indicate that appellant was under a "tremendous amount of stress related to both the requirements of her job and conflicts with her supervisor." He has not identified the requirements of appellant's job or conflicts with sufficient specificity to allow the Office to relate the same to the identified causative factors. Therefore, this evidence also fails to directly address the central issue, i.e., whether the identified causative factors were compensable under the Act, as it does not set forth any additional factual information that would bring the identified factors within the scope of the Act. With her May 21, 1996 request for reconsideration appellant did not submit any evidence relevant to her request. Thus, this request for reconsideration was properly denied as it was prima facie insufficient to warrant review of the prior decision. Finally, with her June 11, 1996 request for reconsideration appellant submitted a cassette tape, which counsel for appellant identified as a tape recording of appellant on the day of the incident, a number of articles concerning reflex sympathetic dystrophy, a medical report by Dr. Leon Fong, a Board-certified orthopedic surgeon and a written statement by Kenna J. Ault, a coworker of appellant. The cassette tape by appellant purportedly on or about the time of the incident in question has not been authenticated and is garbled. Therefore, it is of no probative value. The articles submitted do not address any of the claimed medical conditions identified by appellant and are of general application rather than specifically addressing appellant's claim. Therefore, these articles are immaterial to appellant's claim. Neither the incomplete statement by Ms. Ault nor the medical report by Dr. Fong address the events of February 1, 1996. Consequently, this evidence is also irrelevant to the present case. As appellant did not submit any relevant information with her requests for reconsideration, the Office properly found that the evidence submitted was not sufficient to reopen her case for merit review.

² Sandra F. Powell, 45 ECAB 877 (1994); Eugene F. Butler, 36 ECAB 393 (1984); Bruce E. Martin, 35 ECAB 1090 (1984).

³ Dominic E. Coppo, 44 ECAB 484 (1993); Edward Matthew Diekemper, 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated June 18, May 29 and January 10, 1996 are hereby affirmed.

Dated, Washington, D.C. October 5, 1998

> Michael J. Walsh Chairman

Willie T.C. Thomas Alternate Member

Michael E. Groom Alternate Member